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# Vantage Points

A Board Member's Guide to Update 77



Policy Service

**Your  
Viewpoint?**

**Vantage Points** is an executive summary, prepared for board members, of the TASB Localized Update. The topic-by-topic outline and the thumbnail descriptions survey the update landscape, focusing attention on key issues to assist local officials in studying specific changes found in the policies. The description of policy changes in **Vantage Points** is a highly summarized overview and should not substitute for careful attention to the significantly more detailed Explanatory Notes and the policies within the Localized Update Packet.

**PLEASE NOTE:** This Update 77 **Vantage Points** and the Localized Update 77 packet may not be considered as legal advice and are not intended as a substitute for the advice of a board's own attorney.

We welcome your comments or suggestions for improving **Vantage Points**. Please write to us at TASB Policy Service, P.O. Box 400, Austin, TX 78767-0400, or call us at 800-580-7529 or 512-467-0222.

For further information about Policy Service, check out our Web site at <http://www.tasb.org/services/policy>.

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## **The Big Picture**

The Big Picture of Update 77 is a mix of issues forming the second half of the post-legislative updating task. Update topics include conflict of interest disclosures, records management, DAEP teacher certification, hearings rules, homebound instruction, and state and federal “wellness” policy issues.

### **Conflict of Interest Board Members and Vendors**

In the Legislature’s 79th Regular Session, the legislature added another layer to conflict of interest disclosures for board members and the superintendent, and added vendors as well. **BBFA(LEGAL)** has been redeveloped to more clearly address such disclosures and to include the new provisions of the Local Government Code from HB 914 that:

- Define the “local government officer”—including an employee designated as the executive officer of the board. In the context of school districts, this definition includes board members and the superintendent.
- Require disclosure by a “district official” of the following circumstances involving a vendor who is doing business with the district or with whom the district is considering doing business:
  - Employment or other business relationships that result in taxable income.
  - Gifts from the vendor other than food, lodging, transportation, or entertainment accepted as a guest that aggregate to \$250 or more during the preceding 12 months.
- Require posting on the district Web site the disclosures and questionnaires filed with the records administrator.
- Make the failure of a district official to file the required disclosure a Class A misdemeanor.

Vendors, as noted at CHE(LEGAL), are likewise required to complete a questionnaire developed by the Texas Ethics Commission. The district officer “conflict disclosure statement” recently promulgated by the Texas Ethics Commission and the vendor questionnaire must be filed by the officer and the vendor respectively:

- With the district’s records administrator (the superintendent or other person responsible for maintaining the records of the district).
- Within seven days. For district officers, the clock begins ticking when the officer becomes aware of the facts that require the disclosure. For the vendor, the time frame begins with the initiation of contract discussions or negotiations or with the application, response to a bid request, etc.

Such disclosures are in addition to those already in the Government Code and BBFA(LEGAL) for (1) substantial interest in a business entity or in real property or (2) any interest in any property being considered for purchase by the district.

Finally, the scope of BBFA has been limited to conflict of interest disclosures, and a new code has been created at BBFB for Prohibited Practices. The text at **BBFB(LEGAL)**, previously found at BBFA, was unaffected by recent legislation.

## Employees

**DBD(LEGAL)** has also been redeveloped to clarify conflict of interest standards applicable to employees, beginning with the Penal Code and Education Code provisions regarding ethics violations. From HB 914, we have added the board’s authority to extend to all or certain employees the “conflicts disclosure statement” requirement of vendor relationships noted above for district officials. An employee who subsequently does not make a required disclosure statement to the district’s records administrator within the seven-day period commits a Class C misdemeanor. The board is also authorized to levy district sanctions on the employee.

### ***(LOCAL) POLICY CONSIDERATIONS:***

#### ***DBD***

Your current policy has been reorganized to better address the circumstances requiring disclosure of conflict of interest and includes:

- The locally imposed general standard for disclosure of conflict, or potential conflict, with the “proper discharge of assigned duties and responsibilities” or with the “best interest of the district.”
- The more explicit standard to which employees and board members are held regarding substantial interest in a business entity or in real property.

The superintendent, as the CEO and district official, must disclose a conflict of interest for any interest in any type of property and is the only employee who must file disclosure statements related to vendor relationships.

The text suggested for this policy does not impose on employees the “conflicts disclosure statement” requirement found in HB 914. If your district would like to extend the requirement to employees, it may do so for all employees or for employees in certain positions.

We recommend adding DBD(EXHIBIT) to your manual to facilitate the filing of employee conflict of interest disclosures. The exhibit consists of two forms—one form for the use of all employees to disclose substantial interest in a business entity or in real property and another form, for the superintendent only, for disclosing interest in any property.

## Other Board Issues Training

New training requirements related to the Open Meetings Act—for board members—and to the Texas Public Information Act—for board members and the public information coordinator—have been added to **BBD(LEGAL)**:

- The attorney general's office may provide the training or may approve other providers. The attorney general's office is expected to release a training video in December 2005.
- The training must occur within 90 days after taking the oath of office, except that trustees sworn in prior to January 1, 2006, have until January 1, 2007, to complete the training.

**(LOCAL) POLICY CONSIDERATIONS:  
BBD**

The statute that added the training requirement noted above also introduced the term "public information coordinator." The duties of the coordinator are primarily administrative and are typically assumed by the superintendent. Consequently, we have added this policy to designate the superintendent as the public information coordinator and to delegate to him or her the training requirement regarding the Texas Public Information Act.

## Hearing Rules

Excerpts from TEA's updated rules for appeals to the Commissioner have been added to the complaint policies—**DFD(LEGAL)**, **DGBA(LEGAL)**, **FNG(LEGAL)**, and **GF(LEGAL)**. The old rules, developed when most hearings were *de novo*, were replaced to accommodate "substantial evidence" reviews. Common to all the revised policies are:

- A tape recording or transcript of the hearing at the local level. A tape recording is not acceptable, however, for an appeal of a board's decision following a hearing by an independent hearing examiner.
- All evidence admitted.
- All written pleadings, motions, and intermediate rulings.
- A description of matters officially noticed.
- If applicable, the recommendation of the independent hearing examiner.
- The transcript of the oral argument before the board.
- The decision of the board.

An appeal following a hearing by an independent hearing examiner must also include, as applicable, the board or board subcommittee's transcript of the oral arguments, the board or subcommittee's decision, and written reasons for changing the recommendation of the independent hearing examiner.

**Other Employee  
Issues  
Certification**

***(LOCAL) POLICY CONSIDERATIONS:  
DBA***

TEA's Division of NCLB Program Coordination has determined that the home campus teacher of a secondary student assigned to a DAEP can be considered the teacher of record. The student can be considered to be receiving instruction from a "highly qualified" teacher, eliminating the need to notify parents that the teacher lacks such qualification, if the following policy requirements are met:

- The home campus teacher:
  - Is "highly qualified" and assigns and evaluates the DAEP-assigned student's coursework, providing substantially the same coursework; and
  - Has final authority on grades and is regularly available to the student and DAEP teacher.
- The DAEP teacher meets applicable SBEC certification requirements.

The particulars regarding valid credentials have been deleted in favor of language commonly found in employee contracts; instead, the superintendent has been charged with ensuring that contract personnel have valid credentials before contracts are issued.

The statement regarding maintenance of personnel records has been deleted in favor of the district's records management plan required by the Local Government Code.

**Discrimination**

Two measures of harassment have been added to **DIA(LEGAL)**:

- From federal law—"Harassment on the basis of a protected characteristic is a violation of the federal anti-discrimination laws."
- From case law—"Harassment violates Title VII if it is sufficiently severe and pervasive to alter the conditions of employment."

***(LOCAL) POLICY CONSIDERATIONS:  
DAB***

This policy currently provides a list that was developed to meet the requirements of Civil Order 5281 for objective, non-racial and non-ethnic criteria for making employment decisions. In the opinion of the U.S. Department of Justice, however, one item in the list—"suitability for the position"—is subjective and could easily be misapplied in a discriminatory manner prohibited by federal law. Consequently, this criterion has been deleted from the list. Another item in the list—"evaluations"—has been expanded to encompass "appraisals and other performance evaluations."

**Resignations**

***(LOCAL) POLICY CONSIDERATIONS:  
DFE***

The policy language recommended for this code is now more specific regarding the acceptance of resignations. The superintendent or designee is authorized to accept the resignation of an at-will employee at any time. In the case of contract employees, the superintendent may accept resignations:

- From the end of the school year up to the penalty-free resignation date preceding the next school year.
- From the penalty-free resignation date until the beginning of the school year, contingent upon finding a suitable replacement.
- During the school year unless the resignation is referred to the board to pursue SBEC sanctions. Acceptance by the superintendent precludes the board's option to pursue sanctions.

**Instruction  
Special Education**

On July 1, 2005, the Individuals with Disabilities Education Improvement Act (IDEA 2004) became effective, with implementation dependent on state action and final federal regulations that are still in progress. The Act's significant changes prompted restructuring and extensive redevelopment of the text in the EHBA series of policies (elements of the program), as well as in FOF (discipline). The revised policies more closely track federal statute and regulations without details previously included that are unnecessary for local governance and management. Special education teacher qualifications from the Act were introduced in Updated 75 at DBD(LEGAL). Provisions that are new to the policies include:

- **EHBA(LEGAL) Special Education**
  - Placement options

- **EHBAA(LEGAL)** Identification, Evaluation, and Eligibility
  - Children who are wards of the state and private school students
  - Initial evaluation, consent, and determination
  - Reevaluations
  - Prescription medication
- **EHBAB(LEGAL)** IEP and ARDs
  - Transfer students
  - Required content and modification of an IEP
  - Translation into the parent’s native language
- **EHBAC(LEGAL)** Students in Nondistrict Placement
  - Surgically implanted medical devices (exclusion)
  - Deletion of expiration date for dual enrollment
- **EHBAD(LEGAL)** Transition Services
  - Definition of transition services
  - Graduation conference
  - Recommendation upon expiration of eligibility
- **EHBAE(LEGAL)** Procedural Requirements
  - Redeveloped provisions previously at EHBAD
- **FOF(LEGAL)** Student Discipline: Students with Disabilities
  - Discipline following bullying, harassment, making hit lists, or inflicting serious bodily injury
  - Placement during appeals

**Homebound  
Instruction**

***(LOCAL) POLICY CONSIDERATIONS:  
EEH***

We have created policy text regarding homebound instruction to comply with TEA’s 2005–2006 Student Attendance Accounting Handbook requirement. If your district already had such text at EHBC(LOCAL), it was moved to EEH.



## Textbooks

### ***(LOCAL) POLICY CONSIDERATIONS: EFAA***

The minimum and maximum number of members of the local textbook selection committee has been deleted to allow districts more flexibility, and the April 1 deadline, redundant of TEA's required timeline, has been deleted.

## Assessments OFYP

At **EHBC(LEGAL)** we have added excerpts from TEA's recently adopted rules implementing the optional flexible year program (OFYP), effective October 18, 2005. The areas addressed include:

- Eligibility: students who did not or are not likely to pass a state assessment and/or are not eligible for promotion.
- Program criteria:
  - Students must be provided at least 180 days of instruction, 170 of which must be during the regular school year—the minimum number of instructional days for ineligible students. A maximum of five days may be waived for staff development or teacher preparation.
  - Any transportation or meals normally provided must be continued during the OFYP.
  - Educational support staff may be required to provide services.
  - Educators on 10-month contracts must provide the minimum number of days' service required by the Education Code whether or not the number of instructional days or the number of staff development days is reduced.
- Approval process:
  - The modified instructional calendar must be approved by the board and then submitted to TEA for approval. If the modification includes a reduction in the number of staff development days, it must first be approved by the campus site-based decision-making committee.
  - TEA approval is limited to one year, but districts may apply for extensions.
  - As a condition of approval, the commissioner may require a district to document the success of the program.
- Funding: ADA is modified according to the actual number of instructional days on the approved calendar.

## Exit Level

At **EKB(LEGAL)**, the commissioner is charged with adopting one or more alternate assessments that are nationally recognized, norm-referenced instruments to be administered to an out-of-state transfer student who:

- Is otherwise eligible to graduate, and

- Is enrolling for the first time in a public school in Texas or is enrolling after an absence of at least four years from any public school in Texas.

## **Students Wellness**

The Public Law 108–265 requirement that each school district participating in a meal program under the National School Lunch Act or the Child Nutrition Act adopt a “wellness policy” has been added to **FFA(LEGAL)**. The development must include input from board members, parents, students, school food service personnel, administrators, and the public. The policy itself must include:

- Goals for nutrition education, physical activity, and other school-based activities to promote wellness.
- Guidelines that address:
  - Availability of foods on each campus to promote student health and reduce childhood obesity.
  - Restrictions that are at least as stringent as federal guidelines for the Child Nutrition and National School Lunch Acts.
- A designated person to:
  - Oversee operations and ensure compliance with the policy.
  - Develop a plan to measure implementation of the policy.

We have added to **BDF(LEGAL)** recent state legislation requiring districts to publish policies ensuring that elementary, middle, and junior high school students engage in physical activity for at least 30 minutes per school day or 135 minutes per school week. This is an addition to previous health information reporting and must now be published in student handbooks and on district Web sites.

## **(LOCAL) POLICY CONSIDERATIONS:**

### **FFA**

Last issued in 1994, this text has been deleted because it fell short of the new federal and state requirements for a “wellness” policy that districts must adopt by the first day of the 2006–07 school year.

Prior to the federal mandate for a wellness policy, Texas law and regulation—including the Commissioner of Agriculture’s Texas Public School Nutrition Policy and the requirement for school health advisory councils and coordinated health programs—already required districts to meet many of the standards that are now federally required for all states.

To assist districts in developing a policy that blends the state and federal requirements, TASB Policy Service, in consultation with the Texas Department of Agriculture, has developed a **Wellness Policy Starting Points**. It is available on our Web site through MyTASB and is currently being used by the child nutrition specialists in their training sessions at the Regional Education Service Centers. When your Policy Consultant/Analyst receives the worksheet for your district, a new policy for this code will be created.

## **Steroids**

We have added at **EHAA(LEGAL)** the district responsibility to provide information regarding the use and the health risks involved with the use of anabolic steroids. TEA has developed the information that districts must use, but the State Board has not yet determined the appropriate grade levels.

Also new to the policy is the long-standing requirement to post the Notice Regarding Steroids—see FNCF(EXHIBIT) for the text of the notice—in gyms and classrooms where secondary physical education is conducted.

Although not included in policy, the University Interscholastic League was charged by the Legislature with adopting rules prohibiting a student from participating in an athletic competition sponsored or sanctioned by the League unless the student agrees not to use steroids and the parent acknowledges in writing the statements in FNCF(EXHIBIT). UIL must also:

- Develop and make available to districts an education program for UIL athletic participants, as well as their parents and coaches.
- Work with public or private entities to study the effectiveness of the program.
- Measure the extent of illegal steroid use by high school students.
- Determine the number of districts that test students for illegal steroids.
- Develop a plan for testing students.
- File a report with the Legislature by December 1, 2006.

If the Legislature decides that student use of illegal steroids has not been effectively reduced by the educational program, it may require UIL to imple-

ment the testing plan with the cost of testing covered by an increase in membership fees.

**Limited Open Forum**

Federal definitions for “secondary school,” “meeting,” and “sponsorship” as related to a limited open forum for students have been added to **FNAB(LEGAL)**.

A district creates a limited open forum when it allows a noncurriculum-related student group to meet on school premises during noninstructional time, and it restricts its ability to deny access to student groups based solely on the viewpoint or the content of the group’s speech.

**Miscellaneous Issues**

**Tax bills**

Previously a tax bill had to be sent to either the persons in whose name a property is listed on the tax roll or to the authorized agent. **BDAF(LEGAL)** has been revised to reflect the statutory change requiring that both the persons on the tax roll and the agent be billed.

**Records**

***(LOCAL) POLICY CONSIDERATIONS:  
CPC***  
The policy text tied to implementation of 1989 Records Management Plan legislation has become common district practice and is no longer essential as board policy. In its place is a list of four titles of records officials with cross-references to the applicable policies.

When a student transfers to another district, the sending district is required to make a copy of the academic achievement record available to the student. Newly added to **EI(LEGAL)** is the choice to provide the record to the receiving district as well and the requirement to provide it “promptly.”

We have also deleted an expired provision related to the Early High School Graduation Program and a student’s inability to complete the Recommended or the Advanced Program. In its place we have added a similar provision from the Higher Education section of the Education Code that does not expire.

**Transportation**

**CNA(LEGAL)** now includes the ban on cell phone use by a bus driver except for an emergency or when the bus is not in motion.

The federal highways reauthorization bill has placed new restrictions on the purchase or lease of new vans initiated after August 10, 2005. If the use is primarily for transporting students to and from school or school-related events, a 15-passenger van may not be purchased by a school system unless the van meets federal standards for a school bus or multi-function school activity bus. See **CNB(LEGAL)**. Not included in the policy is the

civil penalty of \$10,000 for a single violation up to a maximum of \$15 million for multiple violations by a single district.

***(LOCAL) POLICY CONSIDERATIONS:***

***PLEASE NOTE***

The ***Vantage Points*** provides identical text to all districts as an executive summary of the update. The Explanatory Notes in your district's Update packet provide a more detailed analysis and recommendation that is specifically tailored to your district's policies. The Explanatory Notes and the policies should also be read carefully before board action is taken.